

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
DIGITAL CONTROL CORPORATION)	FOIA Control No. 2003-119
)	
On Request for Inspection of Records)	

MEMORANDUM OPINION AND ORDER

Adopted: July 8, 2003

Released: July 10, 2003

By the Commission:

1. This order denies an application for review filed by Digital Control Corporation (DCC), seeking review of a decision of the Enforcement Bureau (EB) which denied DCC's Freedom of Information Act (FOIA) request.

2. DCC sought information related to a letter from EB alleging that DCC sold marine radio transceivers for non-marine radio service applications in violation of the terms and conditions of the equipment's grant. DCC requested "the name and address of the party initiating the complaint [against DCC]. If this complaint was made in writing to you by the complaining party, Digital Control Corporation respectfully requests a copy of this letter."¹ EB responded that it was withholding the requested information pursuant to FOIA Exemption 7(D), 5 U.S.C. § 552(b)(7)(D), because "production of such records or information could reasonably be expected to disclose the identity of a confidential source."² DCC sought review of the Bureau's decision,³ asserting that "This is entirely a civil matter involving a commercial product. We see no justification to withhold the identity of the complaining party as a confidential source as defined by the statutes if the complaining party is a private enterprise or individual."

3. On review, we find no reason to disturb the Bureau's decision. FOIA Exemption 7(D) permits withholding of "records or information compiled for law enforcement purposes . . .

¹ Letter from John D. Cattel, President, Digital Control Corporation to Mr. Gregory Weiss, Deputy Assistant Chief, Office of Management and Resources (Dec. 6, 2002) (FOIA Control No. 2003-119).

² Letter from Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau, to Mr. John D. Cattel, Digital Control Corporation (Jan. 22, 2003).

³ Letter from John D. Cattel, President, Digital Control Corporation to Joseph P. Casey, Chief, Technical and Public Safety Division, Enforcement Bureau (Feb. 24, 2003). DCC's appeal was untimely based on the date of EB's decision (January 22, 2003). However, it appears that EB's decision was not mailed until February 21, 2003. Under these particular circumstances, we will treat DCC's appeal as timely.

to the extent that . . . production . . . could reasonably be expected to disclose the identity of a confidential source”⁴ The fact that this is a civil matter does not warrant a different result, since “the law enforcement purposes protected by exemption 7 include both civil and criminal purposes.”⁵ Confidential sources include both “private institutions”⁶ and individuals.⁷ Because, the complaint against DCC was made with an express request for confidentiality, Exemption 7(D) was properly applied to withhold information contained in agency records regarding the identity of this source.⁸ Moreover, the complaint was not made in writing, and therefore there is no “letter” subject to DCC’s request.

4. Accordingly, IT IS ORDERED that Digital Control Corporation’s application for review is DENIED. Digital Control Corporation may seek judicial review of the denial of its FOIA request pursuant to 5 U.S.C. § 552(a)(4)(B).

5. The following officials are responsible for this action: Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴ 5 U.S.C. § 552(b)(7)(D).

⁵ Rural Housing Alliance v. United States Department of Agriculture, 498 F.2d 73, 81 n. 46 (D.C. Cir. 1974).

⁶ 5 U.S.C. § 552(b)(7)(D).

⁷ Brant Construction Co., Inc. v. United States Environmental Protection Agency, 778 F.2d 1258 (7th Cir. 1985).

⁸ Moreover, FOIA deals with agency records and not information in the abstract. Forsham v. Harris, 445 U.S. 169, 185 (1980). Thus, DCC’s FOIA request is defective to the extent that it seeks information per se regarding the complainant.